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EXHIBIT 11-3-00

November 3, 2000

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

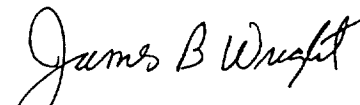
Re: Docket No. 97-00409: All Telephone Companies Tariff Filings
Regarding Reclassification of Pay Telephone Service
UTSE Response to TPOA Motion for Prejudgment Interest

Dear Mr. Waddell:

Pursuant to the October 30, 2000 Notice of Time for Filing Response issued in the above docket, enclosed for filing on behalf of United Telephone-Southeast, Inc. ("United") are the original and thirteen (13) copies of United's Response to the TPOA's Motion and Memorandum of Law Regarding Prejudgment Interest.

Please contact me if you have any questions.

Sincerely yours,


James B. Wright

Enclosures

cc: Honorable Lynn Greer, Pre-Hearing Officer
Parties of Record (w/enclosure)
Dennis Wagner (w/enclosure)
Laura Sykora (w/enclosure)
Kaye Odum (w/enclosure)
Tom Sokol (w/enclosure)

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11-3-00

CERTIFICATE OF SERVICE; DOCKET 97-00409
(Pay Telephone Service Reclassification)

The undersigned hereby certifies that on November 3, 2000 the foregoing United Telephone-Southeast, Inc. Response to TPOA Motion for Prejudgment Interest was served upon the following parties of record by fax or by depositing in the U.S mail addressed as follows:

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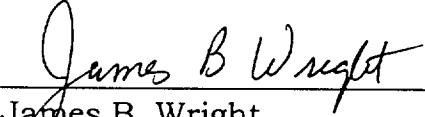
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James B. Wright

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

IN RE: All Telephone Companies Tariff Filings Regarding Reclassification of
Pay Telephone Service as Required by FCC Docket 96-128

DOCKET NO. 97-00409

**UTSE RESPONSE TO TPOA MOTION AND MEMORANDUM OF LAW
REGARDING PREJUDGEMENT INTEREST**

United Telephone-Southeast, Inc. ("United" or "UTSE"), files this Response to the Tennessee Payphone Owners Association ("TPOA") October 26, 2000 Motion for Prejudgment Interest ("Motion") and October 31, 2000 Memorandum of Law in Support of the Motion ("Memorandum").

The TPOA urges the Tennessee Regulatory Authority ("TRA") to award prejudgment interest in the event the final rates approved for payphone lines are lower than the rates previously set by the TRA in this case. The TRA approved UTSE's rates on a temporary basis by order dated April 4, 1997 in Docket No. 97-00345. In that same order the TRA combined UTSE's case with the present case.

United would initially note that it was unable to find a single statutory basis which expressly granted authority to the TRA to award interest. No such authority is cited by the TPOA in either its Motion or its Memorandum. As a creature of statute, the TRA is limited to the powers granted to it by the legislature. An agency can not exceed the authority granted and in the absence of

a grant of power, such action is ultra vires (*See BellSouth Telecommunications v. Greer*, 972 S.W.2d 663, 680 (Tenn App 1997) and cases cited therein)

The TRA has been granted the specific power to impose fines and penalties in numerous instances (See for example T.C.A. Section 65-4-122(d) regarding discrimination; Section 65-4-120 regarding violating orders; Section 65-4-308 regarding penalties; Section 65-4-405 regarding violations; and Section 65-5-206 regarding violations.) However, the cases cited by the TPOA clearly establish that prejudgment interest is not intended to penalize a company. (*See Mitchell v. Mitchell*, 876 S.W. 2d, 830, 832 (Tenn. 1994)). Thus the specific grant of power to the TRA to impose fines and penalties is not a basis to award interest since it is contrary to the purpose cited in the cases permitting prejudgment interest. For this reason, the relief requested by the TPOA should be denied.

United also believes that the decision to award interest in addition to any refund amounts resulting from the final approved rates may be analogous to retroactive rate making, an action clearly contrary to Tennessee law (*See South Central Bell v. TPSC*, 675 S.W. 2d 718 (Tenn App 1984). Although courts have found a basis to uphold an agreed to refund on the grounds of estoppel or upon other grounds (*See Consumer Advocate v. Bissell*, 1996 WL 482970 (Tenn App 1996)), a key distinction in this case is that the parties agreed only to refund the difference between the interim rates and the final rates. The parties did not agree to pay added amounts unrelated to the refund amount. Such a requirement would effectively amount to a retroactive increase in rates not agreed to by the parties. Thus the relief requested by the TPOA should be denied.

In the event the TRA determines it does have authority to award interest, United does not believe the TPOA has met the conditions under Tennessee case law as to when prejudgment interest can be made. As stated in *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, and *Scholz v. S. B. International*, 2000 WL 1231430 (Tenn App August 31 2000); one of the key criterion is whether the amount of the obligation is certain. The TPOA intervened in United's pay phone tariff on March 14, 1997, and after three and one half years, there remains a dispute as to costs, the method of calculating costs, the amount of refund if any, and in fact whether any refund at all will be necessary. Additionally, as of today the TPOA has still not stated specifically what United's rates should be. These facts do not warrant a determination that the amount of the obligation is certain.

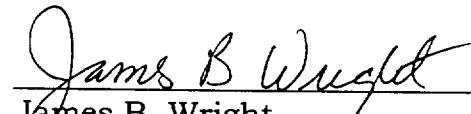
Furthermore, the *Myint* and *Scholz* cases state one of the factors to be used in deciding whether to award prejudgment interest rests on the principles of equity. The TPOA obtained in 1997 immediate reduced pay phone rates subject to true up, without going through a contested case proceeding at that time which would have been costly, time consuming and likely unnecessary since it is dependent on the yet to be decided FCC decisions regarding what the new services test requires. The TPOA did not ask in 1997 to proceed with the contested case, but instead filed the agreed motion to continue the matter. It is inequitable for the TPOA to obtain the benefit from this action and now seek additional benefit in the form of retroactive interest. The TPOA did not ask to have prejudgment interest at that time. In fact as recently as at the October 24,

2000 prehearing conference the TPOA asked only for interest beginning on that date, not retroactively to April 1997. At a minimum these factors should be considered in the discretion of the TRA to limit the time from which interest should begin to accrue. A decision by the TRA to assess interest on a retroactive basis in cases such as this may greatly hamper United's willingness in the future to agree to interim rates with unknown financial consequences, rather than proceed with an existing contested case which would result in a decision with known and certain financial consequences.

For all of the above reasons, the request of the TPOA for prejudgment interest in this case should be denied.

Respectfully submitted,
UNITED TELEPHONE-SOUTHEAST, INC.

Dated: November 3, 2000



James B. Wright
Senior Attorney
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